



November 30, 1995

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VIA HAND DELIVERY

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, DC 20554

DOCKET FILE COPY ORIGINAL

NOV 30 1995

Re: Comments of GO Communications Corporation on  
Microwave Relocation, WT Docket No. 95-157

Dear Mr. Caton:

Enclosed please find for filing an original and four copies of GO Communications Corporation's comments on the FCC's Notice of Proposed Rulemaking on Amendment to the Commission's Rules for Sharing the Costs of Microwave Relocation (WT Docket No. 95-157), released October 13, 1995. We have also enclosed a file copy which should be stamped and returned to the courier.

If you have any questions regarding this filing, please contact the undersigned at (703) 518-4302.

Sincerely,

A handwritten signature in dark ink, appearing to read "Leo R. Fitzsimon".

Leo R. Fitzsimon

Enclosures

No. of Copies rec'd  
List ABOVE

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of )  
Amendment to the Commission's Rules )  
Regarding a Plan for Sharing ) WT Docket No. 95-157  
the Costs of Microwave Relocation ) RM-8643  
To: The Commission )

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**COMMENTS OF GO COMMUNICATIONS CORPORATION  
CONCERNING MICROWAVE RELOCATION**

GO Communications Corporation ("GO") hereby submits its response to the Federal Communications Commission's (the "Commission") *Notice of Proposed Rulemaking*, WT Docket No. 95-157 (October 12, 1995) ("NPRM") in this proceeding.

GO supports the Commission's efforts to ensure that microwave relocation is accomplished in an expedient, efficient and fair manner. Prospective Personal Communications Services ("PCS") providers face many technological, financial and competitive hurdles in providing their services. Any effort by the Commission to help ameliorate these difficulties should be welcomed by all PCS providers. With some exceptions, GO supports the microwave relocation cost sharing plan detailed in the NPRM. In order to further expedite the process of microwave relocation and to speed the development of a competitive PCS industry, GO proposes that the Commission initiate a new rulemaking to eliminate the voluntary two-year negotiating period for microwave relocation and replace it with a one-year mandatory negotiating period.

**I. MICROWAVE RELOCATION COST SHARING PLAN**

With several exceptions which are noted below, GO supports the microwave relocation cost sharing plan (the "Plan") described by the Commission in the NPRM. By ensuring that the

financial obligations of each party are fair and equitable, the Plan will encourage the expedient development of PCS.

**A. The Cost Sharing Formula**

As a means for determining the reimbursement obligations of subsequent PCS licensees directly benefiting from spectrum cleared by an initial PCS relocater, GO supports the use of the formula described by the Commission in the NPRM.<sup>1</sup> Under the formula, the cost of relocating a microwave link is amortized over a ten year period. Each subsequent PCS licensee benefiting from the cleared spectrum pays an amount for reimbursement which is reduced relative to the number of licensees already benefiting from the cleared spectrum and the relative time of market entry of a licensee. Thus, the original relocater would always pay the largest share of the relocation costs and each subsequent licensee would pay progressively less.<sup>2</sup> By depreciating the amount of reimbursement relative to the number of subsequent licensees taking advantage of the cleared spectrum and the time when the subsequent licensee began to use the cleared spectrum, the formula allows each benefited party to pay its own fair share of the costs.

**B. Depreciation Should be Calculated From a Uniform Date for all Relocators**

The NPRM describes three alternatives for deciding when to begin depreciating the costs of relocation, the  $T_1$  variable in the Commission's formula. The first method would be to base the  $T_1$  on the date that the relocater acquires the interference rights, as proposed by PacBell.<sup>3</sup>

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<sup>1</sup> NPRM at ¶ 25.

<sup>2</sup> NPRM at ¶ 31. GO believes that this is fair in light of the tremendous advantage of being the first to market in the extremely competitive field of wireless communications

<sup>3</sup> NPRM at ¶ 30.

The second choice would be to base  $T_1$  on the date that the PCS relocater places its system in service, as proposed by the Personal Communications Industry Association (the “PCIA”).<sup>4</sup> As the Commission points out, the PCIA standard would be difficult to confirm and may lead to some PCS relocators trying to extend the  $T_1$  date in order to lessen the depreciation value of the formula. This would be unfair to subsequent licensees who are required to reimburse the initial relocater for relocating the incumbent microwave link.

The third choice described in the NPRM is to set the  $T_1$  variable on a uniform date for all PCS licensees.<sup>5</sup> GO supports this alternative over either of the preceding choices for two reasons. First, this method of determining the  $T_1$  date would be easiest to administer for the relocation clearinghouse.<sup>6</sup> Second, fixing a uniform date would lower the reimbursement costs for subsequent PCS licensees, many of whom will be Designated Entities (“DEs”) such as GO who have had to endure numerous and costly delays in obtaining their licenses. By setting the  $T_1$  variable on a uniform date for relocators, the Commission will be taking a small step towards remedying the tremendous competitive disadvantage facing entrepreneurs such as GO due to factors beyond their control.

### **C. Only Actual Relocation Costs Should be Reimbursable**

As noted by the Commission in the NPRM, relocation costs can be divided into two categories.<sup>7</sup> First, there are the actual costs of relocating a microwave incumbent to comparable facilities. While there are sure to be disputes as to the actual costs of relocation, these costs are

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<sup>4</sup> Id.

<sup>5</sup> NPRM at ¶ 31.

<sup>6</sup> GO supports the appointment of a qualified neutral entity to function as an administrator of the cost-sharing plan creation of a neutral clearinghouse to administer the Plan.

<sup>7</sup> NPRM at ¶ 36.

quantifiable and should be included as reimbursable costs under the Plan, subject to the per link relocation cap discussed in Section D of this Comment. The second type of relocation costs are premiums which incumbent microwave licensees are demanding from PCS relocators. These costs are often extortionate as microwave incumbents have sought to exploit the Commission's two-year voluntary negotiating period in negotiations with PCS licensees anxious to get their systems running and be the first to market. GO agrees with the Commission's tentative conclusion that these premium payments should not be reimbursable under the Plan.<sup>8</sup> These premiums are paid by PCS licensees in order to have the advantage of being first to market. Subsequent licensees enjoy no such advantage and should not be forced to reimburse the initial relocators for the opportunity to be first to market. In addition, reimbursements under the Plan will occur after the links have been relocated and those paying under the Plan will have no input into the negotiation of such premiums.

The Commission asks for comment on whether not allowing recovery of premiums under the Plan will inhibit relocation during the voluntary negotiating period.<sup>9</sup> The likelihood that failure to allow for recovery of premium payments will inhibit relocation during the voluntary negotiating period is very low. The A and B block PCS licensees which are negotiating relocation agreements now are unlikely to impede the development of their networks because they know that they will be unlikely to be able to recover a percentage of premiums paid. If subsequent PCS licensees were forced to reimburse the initial relocators for these premiums, they would in effect be subsidizing the tremendous advantage that the initial PCS licensees have in being first to market. This would be especially unfair for DEs such as GO, who

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<sup>8</sup> NPRM at ¶ 37.

<sup>9</sup> Id.

have been forced to wait for their chance to compete with larger and better financed competitors in the A and B blocks.

**D. The Reimbursement Cap for Microwave Relocation Should be \$250,000**

GO supports the Commission's tentative approval of a \$250,000 per link cap for microwave relocation (plus \$150,000 if a tower is required).<sup>10</sup> This cap, originally proposed by the PCIA, more accurately reflects the true average cost of relocating a microwave link than the \$600,000 per link cap proposed by PacBell. GO urges the organization ultimately chosen to be the PCS industry clearinghouse to carefully monitor relocators' submittals to ensure that they accurately reflect the true costs of each relocation. Because the cap is an average, some relocators may end up paying more than the cap limit to relocate particularly expensive links.<sup>11</sup> The clearinghouse administrator must ensure that these costs are not passed through to subsequent PCS licensees in reimbursements for less expensive links.

**E. Designated Entities Should be Able to Make Their Reimbursement Payments Under the Plan in Installments**

GO supports the Commission's tentative conclusion that PCS licensees that are allowed to pay for their licenses in installments under the Commission's designated entity rules should have the same payment option available to them under the Plan.<sup>12</sup> This would permit DEs to pay for their fair share of relocation costs without having to tie up a significant amount of up-front

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<sup>10</sup> NPRM at ¶¶ 42-43.

<sup>11</sup> See NPRM at ¶ 43.

<sup>12</sup> NPRM at ¶ 61.

capital, allowing them to finance the buildout of their networks in order to provide a more competitive PCS industry.

**F. A PCS Licensee Should be Required to Pay for Relocation Only if it Would Have Caused or Received Interference to the Relocated Link(s)**

The NPRM seeks comment on when a subsequent PCS licensee should be required to reimburse relocators under the Plan.<sup>13</sup> GO believes that reimbursement should be required only if the subsequent licensee's system would have caused interference to or received interference from a co-channel microwave system. Thus, subsequent PCS licensees should not be responsible for paying for relocated links where such relocations prove to be unnecessary for the subsequent licensee to deploy its PCS system.

The negotiations for the relocation of microwave incumbents by the initial PCS relocators will take place long before subsequent PCS licensees begin deploying their systems. Thus subsequent licensees will have no input into these negotiations. They should not then be compelled to reimburse the original relocators for unnecessary relocations.<sup>14</sup> As noted, the original relocater has the chance to be first to market in its various regions. This relocater is therefore willing to pay to relocate more links than necessary in order to realize the tremendous benefits of being the first to market in this competitive industry. The tremendous advantage of being first to market outweighs the added costs of relocating unnecessary links. For subsequent licensees, there is no advantage to having these links relocated. These licensees should not have to pay for such relocations where they not only are unnecessary for the deployment of their own

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<sup>13</sup> NPRM at ¶ 56.

<sup>14</sup> As used herein, "unnecessary relocations" refers to the relocation of a microwave link(s) or system which would not have been necessary for the deployment of PCS systems in that such systems would not have caused interference to or would not have received interference from the relocated link(s).

systems but in fact were relocated only to further the advantage of the original relocater in being first to market.

## II. MODIFYING EXISTING RELOCATION GUIDELINES

### A. **The Voluntary Two-Year Negotiating Period Should be Replaced With a Mandatory One-Year Negotiating Period**

As noted by the Commission, the start date of the voluntary negotiating period for microwave incumbents operating in the A and B blocks was set as April 5, 1995.<sup>15</sup> The Commission also noted that the negotiation periods for the C, D, E and F blocks have not been set and would be announced in further public notices.<sup>16</sup> With the C block auction now scheduled to begin on December 18, 1995, it is foreseeable that licenses for successful C block bidders would not be granted until July 1996; over a year from the date when the A and B block licenses were awarded. Thus successful C block bidders will be competing against larger and better financed rivals who enjoy at least a one year head start in deploying their PCS systems. To help remedy this anomalous situation, the Commission should initiate an expedited rulemaking to replace the two-year voluntary negotiating period for all PCS licensees and microwave incumbents with a one-year mandatory negotiating period.<sup>17</sup>

The rules of the one year mandatory negotiating period would remain the same as before. During this period, incumbents and PCS relocators would be required to negotiate in “good

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<sup>15</sup> NPRM at ¶ 12.

<sup>16</sup> Id.

<sup>17</sup> This one year mandatory negotiating period would apply to negotiations between microwave incumbents and PCS licensees in both the A/B and C blocks. For ongoing relocation negotiations in the A/B blocks, the one-year period would begin as of the date of the adoption of the rule. For all other negotiations in either the A/B or C blocks, the one-year period would begin when the PCS relocater makes a written good faith relocation offer to the incumbent.



faith".<sup>18</sup> If, at the end of the one-year mandatory negotiating period, the parties are unable to reach an agreement, the relocater may request involuntary relocation of the existing microwave link(s).

This proposal would expedite microwave relocation and help bring about a competitive PCS market in several ways. First, microwave incumbents would have a shorter negotiating period with PCS licensees. This would give these incumbents less leverage in demanding excessive premiums from PCS licensees negotiating relocation agreements. The experience of many of the initial PCS relocators tells us that these demands have often been extortionate. The two year voluntary negotiating period gives microwave incumbents no incentive to negotiate reasonable relocation agreements quickly. Recognizing the importance of early market entry to PCS relocators, incumbents are able to demand, and relocators feel compelled to accept, relocation agreements which pay the incumbents several times more than the actual costs of relocating the links. Eliminating the voluntary two year negotiating period would give incumbents less leverage to demand unreasonable relocation agreements.

Second, eliminating the voluntary negotiating period for PCS licensees would help close the competitive gap between PCS licensees in the A and B blocks and those in the C block. Rather than being faced with the choice of meeting the excessive demands of an unscrupulous incumbent or waiting up to three years to relocate an incumbent,<sup>19</sup> C block licensees would have

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<sup>18</sup> GO supports the Commission's tentative conclusion in the NPRM that an offer by a PCS licensee to replace a microwave incumbent's system with comparable facilities is a good faith offer and that acceptance of such an offer by an incumbent is acting in good faith. Conversely, the failure to offer comparable facilities by a PCS licensee or the failure of a microwave incumbent to accept an offer of comparable facilities would constitute bad faith.

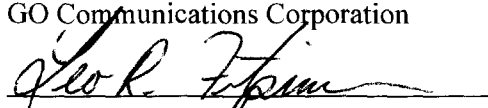
<sup>19</sup> Presently, C block licensees are projected to receive their licenses from the Commission in the summer of 1996. Assuming that the voluntary two-year negotiating period begins running at that time, C block licensees may have to wait until the summer of 1999 in order to fully deploy their PCS networks. This would hardly be consistent with the Commission's stated goals of rapidly developing a highly competitive PCS industry.

to wait a maximum of only one year before they can relocate incumbents. The result will be more rapid competition in the emerging PCS industry and lower prices for consumers.

### III. CONCLUSION

GO supports the Commission's efforts to ensure that microwave relocation is accomplished in a fair and expedient manner through the cost sharing plan described by the Commission in the NPRM, subject to the exceptions and modifications described herein. PCS licensees who benefit from the clearance of spectrum by other PCS licensees should be required to pay their fair share of the costs associated with such clearance. These subsequent licensees should not, however, be forced to subsidize the advantage enjoyed by the initial relocators of being the first to market. By eliminating the voluntary two-year negotiating period and replacing it with a mandatory one-year period, the Commission would reduce the extortionate premiums relocators are being forced to pay and would provide C block entrepreneurs a chance of competing with the A and B block licensees on a more equal footing. GO urges the Commission to adopt its proposals in its efforts to expedite the development of a more competitive wireless communications industry.

Respectfully Submitted,

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